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October 6, 2022

CONFIDENTIAL AND FILED UNDER SEAL

The Honorable Alan D. Albright
United States District Court Judge
800 Franklin Avenue
Room 301
Waco, Texas 76701

Re: No. 6:21-cv-00128-ADA; *WSOU Investments, LLC d/b/a Brazos Licensing and Development v. Cisco Systems, Inc.*; U.S. District Court, Western District of Texas, Waco Division.

To the Honorable Judge Alan D. Albright:

Plaintiff WSOU Investments, LLC, d/b/a Brazos Licensing and Development ("Brazos"), writes to inform the Court about a factual development relating to Cisco's pending 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, Dkt. 85.

On January 24, 2022, Brazos produced the "Amendment to Patent Purchase Agreement," WSOU-CISCO 007117-007545; *see also* Dkt. 91, Ex. B. Recently, Brazos learned that the version it has produced was not the final version of that agreement, which Nokia had in fact produced in response to subpoena in the case styled *WSOU Investments LLC v. Canon, Inc.*, Case No. 6:20-cv-00980-ADA (W.D. Tex.), among other cases currently pending before the Court. Brazos has now produced the correct version of the amendment and attaches it as an exhibit here. Attachment 1A, WSOU-CISCO 026765-026794. Brazos alerts the Court to this development both to acknowledge the error and to spell out the implication of the correct version of the Amendment to Cisco's pending 12(b)(1) motion to dismiss for lack of subject matter jurisdiction.

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Background

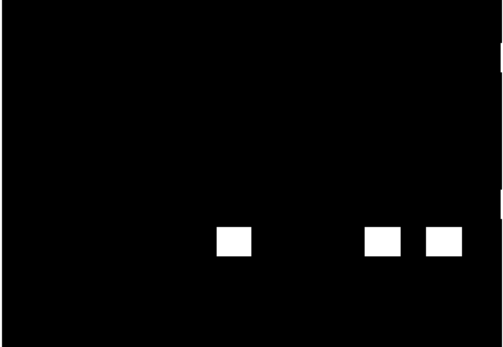
On [REDACTED], Nokia¹ and Wade & Company executed a Patent Purchase Agreement (“PPA”). Under the PPA, [REDACTED]

[REDACTED], Nokia and Wade agreed to amend the PPA. As relevant here, the Amendment to the PPA [REDACTED]
[REDACTED] As explained below, that section differs in material ways between the version previously produced (the “wrong” version) and the version attached as Attachment 1A (the “right” or “correct” version).

Two Versions of the Amendment

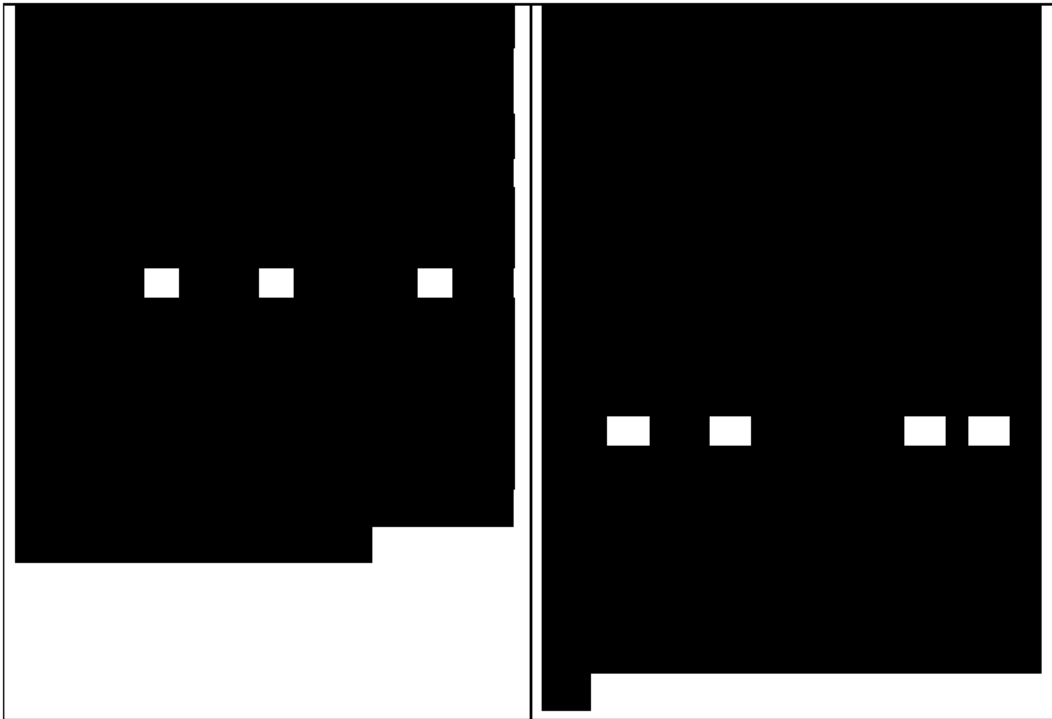
On September 15, 2022, counsel for Nokia alerted the undersigned Brazos counsel of a later-in-time, executed version of the Amendment to the PPA. Nokia counsel noted that Nokia had produced this executed version in the *Canon* case with bates range NK_CANON_000019–000033 in April 2022. Nokia counsel then provided a copy of that version to Brazos.

Brazos has since carefully reviewed the differences between the two versions. Most importantly here, the correct version [REDACTED]
[REDACTED]

Wrong Version (language removed in red)	Right Version (additional language in green and <u>underlined</u>)
	

¹ “Nokia” collectively refers to the entities Alcatel Lucent, Nokia Solutions and Networks BV, and Nokia Technologies Oy.

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Brazos has confirmed that the version attached here was in fact the version executed by the parties. The changes to the Amendment between the two versions reflect revisions suggested by Brazos's General Counsel, Stuart Shanus on [REDACTED]. Mr. Shanus attached a redline to the operative Amendment and explained those redlines by email [REDACTED]:



Attachment 1, WSOU-CISCO 026759–026764.

Nokia accepted those changes and reverted the Amendment to Mr. Shanus “for [his] execution.” *Id.* Mr. Shanus, on behalf of Brazos, then executed that Amendment and sent it back to Nokia, noting “Countersigned Amendment to PPA attached.” *Id.*

The wrong version is a previous draft of that Amendment, [REDACTED] and never in fact executed by the parties. Brazos has identified an

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email from Benjamin Rubin, in-house counsel at Nokia, to Mr. Shanus [REDACTED], attaching a clean .pdf draft (Attachment 2A) and redline Word version (Attachment 2B) of the Amendment that matches the version that Brazos has produced in this litigation. *See* Attachment 2, WSOU-CISCO 026795–026803.

The differences in the two versions directly implicate Cisco’s motion to dismiss for lack of subject matter jurisdiction, Dkt. 85. In Cisco’s Reply Brief, Cisco argued—for the first time—that the assignment of the PPA from Wade to Brazos was invalid because [REDACTED]

Dkt. 94, at 9.

For the Court’s benefit, Brazos also attaches an appendix identifying the Attachments hereto.

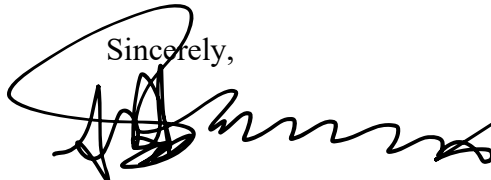
Brazos acknowledges its error.

Brazos sincerely apologizes to the Court for its error. Although the wrong version was never in fact executed, the produced Amendment appears to be so: It contains the signatures of all parties to the Amendment. WSOU-CISCO 007117-007545; Dkt. 91, Ex. B.

On learning of the existence of the correct version, Brazos immediately began a diligent investigation into how it could have produced the wrong version, and why that version appears executed. The mistake, so far as Brazos can tell, occurred when Brazos attempted in April 2020 to collect all of the documents relating to the PPA and the subsequent amendments in a single, easily accessible location. The signatures to the Amendment were inadvertently attached in error to an earlier-in-time draft, and that version was ultimately produced.

Brazos will meet and confer with Cisco and coordinate with the Court to address any potential concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Hoke (Trey) Peacock III', written over a large, stylized circular flourish.

J. Hoke (Trey) Peacock III

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Appendix A

Attachment #	Bates No.	Description
1	WSOU-CISCO 026759–026764	Email from Stu Shanus attaching the correct version of the Amendment to Patent Purchase Agreement (Attachment 1A).
1A	WSOU-CISCO 026765–026779	<i>Correct</i> version of the Amendment to Patent Purchase Agreement.
2	WSOU-CISCO 026795–026803	Email from Benjamin Rubin, in-house counsel at Nokia, to Mr. Shanus attaching a clean .pdf draft (Attachment 2A) and redline Word version (Attachment 2B) of the <i>wrong</i> version of the Amendment.
2A	WSOU-CISCO 026804–026816	Clean .pdf of the <i>wrong</i> version of Amendment to Patent Purchase Agreement.
2B	WSOU-CISCO 026817–026829	Redline Word version of Attachment 2A.